



CITY OF NEW ORLEANS

Board of Zoning Adjustments

Administrative Rules, Policies & Procedures

Adopted: August 11, 2014

WHEREAS, under the provisions of the Revised Statutes of Louisiana, Title R.S. 33:4727, the Board of Zoning Adjustments is required to adopt rules for the transaction of business;

WHEREAS, certain administrative policies must be adopted for the orderly handling of appeals, special exceptions and variances to insure uniformity of action; and

WHEREAS, it is necessary that these rules, policies and procedures be adopted and made public and available to all Governmental Bodies and citizens,

NOW THEREFORE,

BE IT RESOLVED BY THE BOARD OF ZONING ADJUSTMENTS that the following rules, policies, and procedures are hereby approved and adopted:

Originally adopted:	August 20, 1970
Amended:	April 18, 1977
Amended:	June 9, 1997
Amended:	August 11, 2014

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ADMINISTRATIVE RULES, POLICIES AND PROCEDURES

FOR THE

BOARD OF ZONING ADJUSTMENTS

I. STRUCTURE

A. Composition

There shall be attached to the City Planning Commission a Board of Zoning Adjustments. The Board shall consist of seven members who shall be domiciled in and electors of the City, appointed by the Mayor with the approval of the Council for five-year terms, staggered so that the term of one or two members shall expire each year. Neither the Executive Director nor any member of the City Planning Commission shall be a member of the Board.

A member may be removed for cause by the appointing authority provided that such removal shall be only for reasonable cause set forth in writing. Any member so removed shall have reasonable opportunity to be heard publicly before the City Council and in such event the removal shall be effective only if approved by a majority of the City Council. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant and the same manner as the original members were appointed.

B. Functions

The Board shall:

1. Hear and determine appeals from applicants who have been refused building permits because of a violation or conflict with the zoning ordinance or the official map of the City.
2. Hear and decide appeals where error is alleged in any order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance of the City.
3. Have the power to permit variations from the zoning regulations in classes of cases or situations, and in accordance with the principles, conditions and procedures specified in and subject to the limitations imposed by the zoning ordinances of the City.

4. And other functions as provided by law.

C. Officers

Annually, at the first meeting on or after July 1st of each year, the Board shall elect from its members a Chair and a Vice-Chair as it shall deem necessary and proper. The Chair and Vice-Chair shall serve until June 30th of the following year or until their successors have been elected and qualified and may, if duly elected by the members, succeed themselves. The duties of the Chair shall include the following:

1. The Chair shall preside at all meetings and hearings of the Board. In the event of the absence or disability of the Chair, the Vice-Chair shall preside.
2. The Chair may designate members of the Board to make personal inspections when necessary from time to time, and unless directed shall appoint such committees as may be found necessary.
3. The Chair shall report at each meeting on all official transactions or communications that have not been otherwise communicated to the Board.
4. The Chair shall, subject to these rules, and further instructions from the Board, transact the official business of the Board, supervise the work of the staff and exercise general disciplinary power.
5. The Chair subject to these rules and limitations shall decide all meeting protocol unless otherwise directed by a majority of the Board in session at the time.

D. Staff

The City Planning Commission staff shall serve as staff to the Board. The staff assigned to the Board, subject to the provisions of these rules and the direction of the Board and its Chair, shall conduct all correspondence of the Board; send out all notices required by these rules and the order of the Board; shall attend all meetings of the Board and all hearings; shall review all appeals and applications for variations to see that these rules are complied with; shall keep the dockets and minutes of the Board's proceedings; shall compile all required records; shall maintain the necessary files and indexes; generally supervise all the clerical work of the Board; and shall retain in the records the original papers acted upon by the Board, or digital copies of the same.

II. PROCEDURES

A. Pre-Application Meeting and Project Neighborhood Participation Program

All applications for variances must include a Project Neighborhood Participation Program (NPP), except for variance applications involving a single-family or two-family dwelling, in compliance with Article 16, Section 16.9.2 of the Comprehensive Zoning Ordinance.

B. Applications

Every appeal or application made to the Board shall be made on the forms provided by the Board, and shall be accompanied by the payment of the appropriate filing fee and submitted to the City Planning Commission office. The application form shall be accompanied by the data required in such form so as to supply all the information necessary for a clear understanding and intelligent action of the Board. An application is complete only upon receipt of all items required by the BZA.

The staff may request from the appellant or applicant such additional information and data as may be required to fully advise the Board, whether such information and data is called for by the official forms or not. Any failure or refusal on the part of the appellant or applicant to furnish such additional information or data may be grounds for the denial or deferral of the appeal or application by the Board.

The action in each case must be based largely on the information so furnished. The condition(s) of the approval of the Board will be incorporated in the resolution granting the approval. Such conditions may be required to be fulfilled prior to the final granting of the request.

Every appeal of the decision of the Director of the Department of Safety and Permits shall be taken within forty-five (45) days from the date of refusal of a permit or date of order, ruling, decision or determination by the Director of the Department of Safety and Permits. Appeals or applications taken after forty-five (45) days from the date aforesaid shall not be considered by the Board.

C. Docket and Calendar

1. At the meeting immediately following the adoption of these rules, and annually thereafter at the Board's regularly scheduled November or December meeting, the Board shall adopt a docketing schedule for the following year for all items requiring public hearing and action by the

Board. This schedule shall establish docket deadlines, deadlines for submittal of written documents related to an item before the Board, deadlines for distribution of staff reports to the Board and to the public, public hearing dates, and resolution deadlines. A copy of this schedule shall be posted on the City Planning Commission's web site.¹

2. Each application shall be filed in proper form with the required data, shall be numbered serially, docketed and placed upon the agenda of the Board. The docket numbers shall begin anew on January 1st of each year, and shall be hyphenated with the number of the year in which the said appeal or application is filed.
3. All applications shall be filed in compliance with the Board's adopted docketing schedule. Applications filed in compliance with the docketing schedule shall be set for hearing on the next meeting day after the docketing of the application. Incomplete applications will not be docketed. Applications submitted after the established docketing deadline will docketed based on the adopted docketing schedule.
4. Items shall be heard in the order in which they appear on the agenda, except that an appeal or application may be advanced for hearing by order of the Board upon good cause shown. Where all appeals or applications cannot be disposed of on the day set, the Board may adjourn from day to day, until the next regular meeting, or special meeting as it may order.
5. Upon docketing of an application for variance, special exception or reasonable accommodation, the staff shall prepare staff reports and submit them to the Board in conjunction with the adopted schedule.

D. Meetings

1. Regular meetings of the Board shall be held at 10:00 a.m. on the second Monday of each month, except when this date falls on a legal holiday, in which case the meeting will be rescheduled in accordance with law. In no event shall any appeal of a decision of the Director of Safety and Permits be heard before 1:00 p.m. All meetings shall be held in the City Council Chamber (First Floor of City Hall) unless otherwise announced by the Board.

¹ For the purpose of these rules, written documents shall include all written reports, studies, analyses, comments, critiques, e-mail messages, statements, petitions, graphs, renderings, drawings, photographs, depictions, maps, charts and other 2-dimensional and 3-dimensional matters related to dockets items.

2. Special meetings may be held at the call of the Chair, or at the request of four members, provided. that each member shall be notified at least forty-eight (48) hours before the set time, except that the announcement of a special meeting at any meeting at which a quorum is present shall be sufficient notice of such meeting.

E. Notice and Public Hearing

1. For all matters within the Board's jurisdiction, the Board shall cause a public hearing to be scheduled and shall decide the matter following such public hearing. The Board shall give notice of the date, time and place of hearing in a manner prescribed in Article 16, Section 16.9.2(1), as well as personal notice to the interested parties no later than five (5) days preceding the hearing date, in accordance with Article 16, Section 16.9.2(4) of the Comprehensive Zoning Ordinance. Such a hearing shall be held within forty-five (45) days following the receipt of the application in correct form, and a decision on the disposition of the matter shall be given within a period of forty-five (45) days following the hearing date.
2. At the hearing, any party may appear in person, by agent, by representative or by attorney.
3. The Board's agenda shall be posted in the following places five (5) working days before each regular meeting.
 - a. At the entrance to the City Planning Commission's office (Suite 7W03, City Hall).
 - b. The main lobby of City Hall.

F. Submission, Distribution and Public Access

All written reports, studies, analyses, comment, critiques, e-mail messages, statements, petitions, graphs, renderings, drawings, photographs, depictions, maps, charts, and other 2-dimensional and 3-dimension matters related to the docket items shall be submitted to the Board by the close of business on the submittal deadline date established in the adopted docketing schedule.

No material (written matter, photographs, maps, etc.) submitted past the deadline established in the adopted docketing schedule will be accepted by the Board or its staff for inclusion in the record. Any such material submitted shall be disposed of and not returned to the submitting party. This provision shall not preclude an oral presentation at the regular meeting, subject to the temporal constraints otherwise set forth herein.

Distribution of staff reports to the Board members and to the general public shall occur on the dates specified in the adopted docketing schedule.

G. Conduct of Meetings

The Chair, Vice-Chair or, in the absence of both, an Acting Chair selected by the members present, shall serve as the presiding officer of all meetings of the. The Chair may participate in the discussions and his/her vote shall be recorded as to each agenda item in accordance with g. below. However, he/she may not make or second a motion without relinquishing the gavel.

1. Parliamentary Procedure

In the absence of any provision in these rules to the contrary, the rules of procedure provided by Robert's Rules of Order shall prevail.

2. Order of Business

The order of business at the hearing shall be as follows:

- a. Call to order and roll call, with recording of members present.
- b. Adoption of minutes from the previous meeting (or as may be corrected).
- c. Communications.
- d. Reading of the Standards of Review
- e. Unfinished Business
- f. New Business
- g. Report of Committees
- h. Any Other Matters
- i. Adjournment.

3. Presentation of Dockets

The appellant or applicant may appear in his/her own behalf or be represented by a duly authorized agent at said hearing. In the absence of any personal appearance or communication on behalf of the appellant or applicant, the Board may proceed to dispose of the matter on the record before it or may defer the matter to a subsequent meeting.

The order of business for each docket shall be as follows:

- a. Presentation by the City Planning Commission staff or the Department of Safety and Permits staff;
- b. Presentation by the Applicant or his/her representative;
 - 1. For variances, special exceptions, or any other requests not specified herein but as provided for by law, the presentation shall be limited to a maximum of three (3) minutes for each applicant/representative speaker. But in no event, shall the cumulative presentation total by applicant(s) or their representative(s) exceed ten (10) minutes.
 - 2. For appeals of the decision of the Director of the Department of Safety and Permits, the presentation shall be limited to a maximum of five (5) minutes for each applicant/representative speaker. But in no event, shall the cumulative presentation total by applicant(s) or their representative(s) exceed fifteen (15) minutes.
- c. Public Comment
 - 1. For variances, special exceptions, or any other requests not specified herein but as provided for by law, comments by the public in support or in opposition shall be limited to a maximum of two (2) minutes.
 - 2. For appeals of the decision of the Director of the Department of Safety and Permits, comments by the public in support or in opposition shall be limited to a maximum of three (3) minutes.
- d. Rebuttal by the Applicant or his/her representative;
 - 1. For variances, special exceptions, or any other requests not specified herein but as provided for by law, the rebuttal shall be limited to a cumulative maximum of three (3) minutes; and
 - 2. For appeals of the decision of the Director of the Department of Safety and Permits, the rebuttal shall be limited to a cumulative maximum of five (5) minutes.

H. Voting

A quorum of the Board shall consist of four (4) members. The concurring vote of four (4) members of the Board shall be necessary to authorize a variance or any other permissible action of the Board as current authorized by law.

The Board shall include in any motion authorizing or denying any variance or special exception, one of the following:

- If the motion concurs with the analysis in the staff report, the motion shall include a statement of concurrence with the staff's analysis;
- If the motion is contrary to any or all of the staff's analysis in the staff report, the motion shall specifically state the rationale for determining compliance or non-compliance with the applicable standards of review.

I. Proxy Voting Prohibited

In accordance with Louisiana Revised Statute 42:5, any manner of proxy voting is prohibited.

J. Final Disposition of Applications or Appeals

The final disposition of any appeal or application before the Board shall be in the form of a resolution. The resolution shall be set forth so that the application is granted or denied with or without conditions and said resolution shall specifically set forth what variation(s) or modification(s) are permitted and what conditions, if any, shall be complied with. Every appeal or application for variation or modification shall be disallowed unless the concurring vote of four (4) members of the Board shall favor the appeal or application. The vote of each member present on each resolution shall be recorded with the resolution.

K. Withdrawal

The appellant or applicant may withdraw his appeal or application at any time before a decision of the Board, but if withdrawn after notice for public hearing, filing fees shall not be returned.

L. Expiration

Except for variances to lot size requirements, no order of the Board authorizing a variance or special exception shall be valid for a period longer than one (1) year from the date of such order unless substantial construction or change of use has commenced in accordance with the plans for which such variance or special exception was authorized, or if the Board does not specify a longer period than

one (1) year for good cause shown. Variances to lot size requirements shall be valid for a period not to exceed five (5) years.

M. Minutes

The Board shall keep minutes of its proceedings. Such minutes shall include, but need not be limited to: the date, time and place of the meeting; the members of the public body recorded as either present or absent; the substance of all matters decided, the vote of each member upon each question, and any other information that the Board requests be included or reflected in the minutes.

It shall be the duty of the staff to keep a true and correct record of all proceedings at meetings, both general and special of the Board. The staff shall provide certified copies of the minutes of all such proceedings to the Directors of the City Planning Commission and the Department of Safety and Permits.

An audio record shall be made at meeting. The audio record shall be kept on file for a period of three years, available for inspection and duplication at the office of the Board of Zoning Adjustments. Duplication shall be at the cost of the applicant or interested party.

The Board shall keep records of its examinations and other official actions on file in the office of the Board and all of the above shall be public record. All testimony, objections thereto, and rulings thereon shall be recorded.

III. GENERAL RULES

A. Ethical Procedures

The Board members shall conduct themselves in accordance with the City Charter, the Code of Ethics for the City of New Orleans (2-716 et seq, City Code) and the State Ethics Code (R.S.42:1101 et seq.).

B. Ex-parte Contacts

Board members shall not permit interviews, formal or informal, written or verbal, with any interested party, elected official, developer or applicant relative to a case before the Board. These ex-parte contacts are improper or give the appearance of impropriety, since all interested parties are not included.

No member or members of the Board shall permit interviews, formal or informal, written or verbal, to any petitioner or petitioners, nor to any representative of such party or parties or to any individuals, or group. Nor shall any Board member or

members in any way pledge themselves to such a party or group or in any way express themselves to such party or group prior to a required public hearing or prior to a Board meeting at which time the matter will be considered.

However, this shall not preclude the discussion by members of procedural or other matters unrelated to the merits of a proposal awaiting Board consideration.

C. Advice

No informal requests for advice on moot questions will be considered by the Board or any individual members of the Board.

D. Standards for Variances

The Board of Zoning Adjustments shall not authorize a variance from the requirements of the Comprehensive Zoning Ordinance unless it shall make findings based upon the evidence presented to it that each request shall indicate all of the following:

1. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district.
2. Literal interpretation of the provisions of the comprehensive Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the Comprehensive Zoning Ordinance.
3. The special conditions and circumstances do not result from the actions of the applicant or any other person who may have or had interest in the property.
4. Granting the variance requested will not confer on the applicant any special privilege which is denied by the Comprehensive Zoning Ordinance to other lands, structures, or buildings in the same district or similarly situated.
5. The variance, if granted, will not alter the essential character of the locality.
6. Strict adherence to the regulation for the property would result in a demonstrable hardship upon the owner, as distinguished from mere inconvenience.

7. The purpose of the variance is not based exclusively upon a desire to serve the convenience or profit of the property owner or other interested party(ies).
8. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.
9. The proposed variance will not impair an adequate supply of light and air to adjacent property, or increase substantially the congestion in the public street, or increase the danger of fire, or endanger the public safety.

E. Amendment to Special Exceptions or Variances

The procedure for amendment of a special exception or variance already approved, or a request for a change of conditions attached to an approval, shall be the same as for a new application

F. Resolutions

Every resolution shall require a majority vote of the Board's entire membership at a legally constituted meeting.

G. Decisions Taken by the Board

The Board may, in conformity with the provisions of Article 14 of the Comprehensive Zoning Ordinance, 4264 M.C.S. as amended, reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the Director of the Department of Safety and Permits. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Director of Safety and Permits, or to decide in favor of the applicant on any matter, or to effect any variance of such ordinance.

Motions failing to obtain the concurring vote of four (4) members of the Board shall result in the denial of the request.

The decision, with reasons therefor, shall be filed in the Office of the Board within 10 days of the actual vote. Failure to file the decision shall not delay issuance of permits in accordance with-a favorable vote so long as conditions attached to said permits are in accord with action of the Board.

If a request is **GRANTED**, the approval is valid for one year from the BZA "Filed" date. Conditions attached to the approval must be fulfilled prior to the release of the building permit or the use and occupancy permit.

If the request is **DENIED WITHOUT PREJUDICE**, the applicant may resubmit the same application at any time.

If the request is **DENIED WITH PREJUDICE**, the applicant cannot resubmit the same application for the original claim until one year from the date of the filing of the original resolution. Nothing contained herein shall prevent the applicant from filing a different application.

Should the Board fail to designate in its motion whether the denial is with or without prejudice, the denial shall be recorded as without prejudice.

H. Right to Appeal

Any person or persons, or any officer, department, commission, board, bureau, or any other agency of the City of New Orleans jointly or singularly aggrieved by any decision of the Board of Zoning Adjustments may present to the Civil District Court of the Parish of Orleans, within thirty (30) days after filing of the decision in the office of the Board, a writ of certiorari asking for such relief and under such rules and regulations as are provided for such matters in appropriate legislation of the State of Louisiana.

IV. AMENDMENTS

These rules may be amended or modified at any regular meeting of the Board by the affirmative vote of five (5) members or 2/3 majority of the Board membership, provided that such amendment is presented in writing at a regular meeting and action taken thereon at a subsequent regular meeting.

APPENDIX 1. HOME RULE CHARTER

APPENDIX 1

BOARD OF ZONING ADJUSTMENTS/ BOARDS AND COMMISSION IN GENERAL

Section 5-408. Board of Zoning Adjustments

Section 5-409. Orientation and Continuous Education Training for Planning Commission and Board of Zoning Adjustments members

Section 5-411. Neighborhood Participation

Section 9-101. Definition of Board.

Section 9-102. Organization

Section 9-103. Power of Delegation

Section 9-104. Appointment and Removal of Board Members

Section 9-105. Vacancies Section

Section 9-106. Prohibited Activities of Board Members

Section 9-107. Quorum

Section 5-408. Board of Zoning Adjustments.

(1) Composition.

There shall be attached to the Commission a Board of Zoning Adjustments to consist of seven members who shall be domiciled in and electors of the City, appointed by the Mayor with the approval of the Council for five-year terms, staggered so that the term of one or two members shall expire each year. Neither the Director nor any member of the Commission shall be a member of the Board. The Mayor may, by Executive Order approved by the Council in accordance with the procedures established in Section 9-201 (2) of this Charter, reassign or attach the functions of the Board to another department or board within the Executive Branch.

- (2) Functions. The Board shall:
 - (a) Hear and determine appeals from applicants who have been refused building permits because of a violation or conflict with the zoning ordinance or the official map of the City.
 - (b) Hear and decide appeals where error is alleged in any order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance of the City.
 - (c) Have the power to permit exceptions to or variations from the zoning regulations in classes of cases or situations and in accordance with the principles, conditions, and procedures specified in and subject to the limitations imposed by the zoning ordinances of the City.

Section 5-409. Orientation and Continous Education Traning for Planning Commission and Board of Zoning Adjusmtnts Members

- (1) *Training.* Each Planning Commission and Board of Zoning Adjustments member shall attend a minimum of six hours of orientation training concerning the duties and responsibilities of the Planning Commission, or Board of Zoning Adjustments, either prior to taking office or no later than one year after office is assumed. All training shall be approved by, and under the supervision of, the City Planning Commission.
- (2) *Continuing education.* All members of the City Planning Commission and the Board of Zoning Adjustments shall receive within each calendar year at least six hours of continuous education in any of the subjects listed in subsection (3) of this section. All training shall be approved by, and under the supervision of, the City Planning Commission.
- (3) *Education subjects.* The subjects for the education required by subsections (1) and (2) of this section shall include, but not be limited to, the following: land use, land use planning, land use law, zoning, transportation, community facilities, historic preservation, ethics, public utilities, parliamentary procedure, public hearing procedure, economic development, housing, public buildings, land subdivision, and powers and duties of the Planning Commission and Board of Zoning Adjustments.
- (4) *Removal from Position.* Members of the Planning Commission and Board of Zoning Adjustments shall be subject to removal by a majority vote of the

members of their respective Commission or Board if they fail to complete the requisite number of hours of orientation training and continuing education within the time allotted in this section.

- (5) *Validity of Decisions.* A failure of one or more members of the Planning Commission or Board of Zoning Adjustments to complete the orientation training or continuing education requirements shall not effect, impact, or invalidate a decision of the Commission or Board.

Section 5-411. Neighborhood Participation

The City shall establish by ordinance a system of organized and effective neighborhood participation in land use decisions and other issues that affect quality of life. It shall provide for timely notification of a neighborhood of any proposed Land Use Action affecting the neighborhood; it shall also provide the opportunity for meaningful neighborhood review of and comment on such proposals. In addition, it shall provide the opportunity for meaningful neighborhood participation in the formulation of the Master Plan or any amendments thereto.

Section 9-101. Definition of Board.

The term "board" as used in this Charter shall be construed as applying to boards, commissions, authorities and other public bodies except the Council.

Section 9-102. Organization.

- (1) Except as otherwise provided by applicable state or municipal law, the terms of all appointments made to boards shall expire on June 30th of the year of such expiration.
- (2) Annually at the first meeting on or after July 1st each year, each board shall elect from its members a chair, a vice-chair, a secretary, and such other officers as it shall deem necessary and proper, all of whom shall serve until June 30th of the following year or until their successors have been elected and qualified, except as otherwise provided by applicable state or municipal law.
- (3) Officers of boards may be removed from their offices by an affirmative vote of a majority of the members of the board at any regular meeting, or at a special meeting if the call for such meeting shall have stated the removal as one of the purposes thereof.

- (4) Members of boards shall serve without compensation but may receive reimbursement for expenses incurred in the conduct of the official business of the board.
- (5) Each board shall set forth in its rules the time, date, and place of its regular meetings.
- (6) The secretary of each board shall keep minutes of its transactions which shall at all times be available for public inspection.

Section 9-103. Power of Delegation.

Boards may delegate powers of appointment, determination of compensation, discipline or removal of their executive officers provided that all personnel actions so delegated shall be reported promptly to the board and such actions shall become null unless approved by the board within sixty days of the date of the action.

Section 9-104. Appointment and Removal of Board Members.

- (1) If the appointment of a board member requires approval of the Council, such approval shall be granted only by the affirmative vote of a majority of all members of the Council.
- (2) A member of a board may be removed by the appointing authority, provided that such removal shall be only for reasonable cause set forth in writing. Any member so removed shall have reasonable opportunity to be heard publicly before the Council, and in such event the removal shall be effective only if approved by a majority of the Council.
- (3) A board member for whose office there exist residence or domicile requirements shall forfeit the office immediately upon the removal of residence or domicile in a manner that would render the board member no longer qualified for appointment to the office held.

Section 9-105. Vacancies.

A vacancy on a board shall be filled in the same manner as the member was originally appointed, provided that appointment to fill a vacancy shall be only for the unexpired term.

Section 9-106. Prohibited Activities of Board Members.

- (1) No member or officer of a board shall borrow money or receive anything of value from any contractor doing business with the board under the penalty of dismissal from the board. No member, officer, or employee of any board shall have any interest in any contract let by the board. Any member of any board who is a director or stockholder in any corporation or who is an agent or attorney for any person who is financially interested in any subject before the board shall reveal such interest to the board and shall not discuss or vote on the subject at any meeting of the board or any of its committees.
- (2) Any member of a board who shall qualify as a candidate for any public elective office or who shall accept an appointive office or position of public employment for which compensation is paid by the City of New Orleans shall forfeit membership on the board.

The provisions of this paragraph shall not apply to ex officio board members or to any board member who serves in such capacity by virtue of an elective office in city government.

Section 9-107. Quorum.

A majority of the existing membership of a board shall constitute a quorum. All actions taken by boards shall require the affirmative vote of the majority of the existing members thereof, provided that regulations may be adopted only upon the affirmative vote of two-thirds of the existing members thereof. The Mayor or, in the Mayor's absence, the Chief Administrative Officer shall not be counted as a part of the existing membership of a board under this section, but if present, may be counted to establish a quorum or required vote.

APPENDIX II. STATE ENABLING LEGISLATION

R.S.33:4727 Board of adjustment; membership; powers and procedures; appeals from decisions

- A
- (1) The local legislative body may provide for the appointment of a board of adjustment, and in the regulations and restriction adopted pursuant to the authority of R.S. 33:4721 through R.S. 33:4729 may provide that the board may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules contained therein.
 - (2) The board of adjustment shall consist of five members, and may include two alternate members, all of whom shall be landowners and qualified voters. The membership of the first board shall serve respectively, one for one year, one for two years, one for three years, one for four years and one for five years. Thereafter members shall be appointed for terms of five years each. *
 - (3) Of the two alternate members first appointed, one alternate member shall be appointed for a term of three years and the other for a term of two years. Thereafter each alternate member shall be appointed for a term of three years. Alternate members shall serve only when called upon to form a quorum, and when so serving shall have all the powers and duties of regular members.
 - (4) All members shall be removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The board shall elect its own chairman, who shall serve for one year.
 - (5) The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to R.S. 33:4721 through 33:4729; however, any rules adopted by a board of adjustment, zoning administrator, or other official or official body appointed by the governing authority shall not be effective until approved in writing by the governing authority.
- B.
- (1) In the parish of Orleans, effective January 1, 1984, the positions of alternate member are abolished and thereafter the board of adjustment of the parish of Orleans shall consist of seven members, all of whom shall be residents and electors of the parish.

* Note: In Orleans Parish Section B applies and supersedes A (2).

- (2) However, the members-serving on the effective date of this Subsection shall continue to serve the terms to which they were originally appointed.
 - (3) The two additional members shall be appointed in the same manner as the initial five members of the board shall serve respectively, one for four years and one for five years. Thereafter each additional member shall be appointed for a term of five years.
- C.
 - (1) Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its meetings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating that fact and shall keep records of its examinations and other official actions, all of which shall be filed immediately in the office of the board and shall be public records. All testimony, objections thereto, and rulings thereon, shall be taken down by a reporter employed by the board for the purpose.
 - (2)
 - (a) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Appeals shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken, and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.
 - (b) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him, that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril of life or property. In such case proceedings shall not be stayed otherwise than by a restraining order that may be granted by the board of adjustment or by a court of record on application or notice to the officer from whom the appeal is taken and on due cause shown.

- (c) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the interested parties, and decide the appeal within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.
- (3) The board of adjustment shall have the following powers:
 - (a) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by an administrative official in the enforcement of R.S. 33:4721 through R.S. 33:4729 or any ordinance adopted thereto.
 - (b) To hear and decide all matters referred to it or upon which it is required to pass under the ordinance.
 - (c) In passing upon appeals, where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, to vary or modify the application of any of the regulations or provisions of the ordinance relating to the use, construction or alteration of buildings or structures of the use of land so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice be done.
- D.
 - (1) In exercising the above mentioned powers the board may in conformity with R.S. 33:4721 through R.S. 33:4729, reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken from.
 - (2) The concurring vote of a majority of the members of the board present and voting shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any ordinance, or to effect any variation in the ordinance.
- E.
 - (1) Any person or persons jointly or severally aggrieved by any decision by the board of adjustments, or any officer, department, board, or bureau of the municipality may present to the district court of the parish or city in which the property

affected is located a petition, duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty days after the filing of the decision in the office of the board.

- (2) Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review the decision of the board of adjustment and shall be prescribed therein the time within which a return may be made and served upon the relator's attorney, that shall be not less than ten days but which may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from but the court may, on application on notice to the board and on due cause shown, grant a restraining order.
- (3) The board of adjustment shall not be required to return the original papers acted upon by it, but may return certified or sworn copies thereof or such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
- (4) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take additional evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.
- (5) The court may reverse or confirm, wholly or in part, or may modify the decision brought up for review. Costs shall not be allowed against the board unless it appears to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from. All issues in any proceedings under this Section shall have preference over all other civil actions and proceedings.

APPENDIX III. CODE OF ETHICS

The Code of Ordinances of the City of New Orleans

Chapter 2, Article VII

Subdivision I. Generally

Sec. 2-716. Civil penalties.

- (a) Classified employees shall be subject to disciplinary action by their appointing authority for violation of this division.
- (b) Unclassified employees and appointed officials shall be subject to suspension or dismissal in accordance with section 3-125 of the Charter for violation of this division.
- (c) Members of boards, commissions, and agencies shall be removed and/or shall forfeit their appointment in accordance with section 9-104 of the Charter for violation of this division.
- (d) Elected officials shall be subject to censure by city council resolution for violation of this division.

(Code 1956, § 22B-31)

Sec. 2-717. Criminal penalties.

Any person who violates the provisions of this division shall be punished by a fine not exceeding \$500.00 or by imprisonment for not more than six months or both such fine and imprisonment.

(Code 1956, § 22B-32)

Sec. 2-718. Advisory opinions.

The ethics review board shall prepare and promulgate procedures for requesting official advisory opinions pertaining to the city code of ethics. All such official advisory opinions shall be in writing. All such official advisory opinions shall be distributed to all agencies of city government and be accessible to all city employees.

(Code 1956, § 22B-33; M.C.S., Ord. No. 17,613, § 1, 6-20-96)

Sec. 2-719. Ethics review board.

An ethics review board is hereby established and authorized to enforce the provisions of the code of ethics of the city.

- (1) *Powers.* Pursuant to [section 9-402](#) of the Home Rule Charter, the ethics review board may establish additional recommendations for the code of ethics, issue advisory opinions, promulgate rules regarding the interpretation and enforcement of the city's code of ethics, refer cases for investigation on referral or complaint, retain counsel, and impose fines.
- (2) *Membership.* The board shall consist of seven members. Six members of the board, all of whom are domiciled in and electors of the city, shall be appointed by the mayor from lists of three nominees each submitted by the presidents or chancellors of Dillard University, Loyola University, Southern University in New Orleans (SUNO), Tulane University, University of New Orleans (UNO), and Xavier University. One additional member shall be appointed by the mayor. Each appointment is subject to approval by a majority of the members of the city council.
- (3) *Qualifications.* No member may hold any elective or appointed position with the city nor any other government or political party office or have held such position within two years before appointment to the ethics review board.
- (4) *Removal.* A member of the ethics review board may be removed by the mayor only for cause in accordance with the procedures established in [section 9-104](#) of the Home Rule Charter and by the council in accordance with the procedures and for the reasons established in [section 3-125](#) of the Home Rule Charter.
- (5) *Vacancy.* Within ten days of a president's or chancellor's recommended appointee's vacancy being created, the mayor shall request the university presidents or chancellors to submit within 30 days lists of three nominees each to the mayor for consideration to fill the unexpired term. Within 30 days of receiving the lists of nominees, the mayor shall submit a selection to the council for its consideration. Within 30 days of an unaffiliated appointee's vacancy being created, the mayor shall submit a suggested replacement to the council for its consideration. Within 30 days of receiving a mayoral nomination, the council shall approve or reject the appointment.
- (6) *Term.* The terms of the initial members shall be as follows: One member shall be appointed for a term to expire on June 30 of the first year; one member shall be appointed for a term to expire on June 30 of the second year; one member shall be appointed for a term to expire on June 30 of the

third year; one member shall be appointed for a term to expire on June 30 of the fourth year; one member shall be appointed for a term to expire on June 30 of the fifth year; one member shall be appointed for a term to expire on June 30 of the sixth year; and one member shall be appointed for a term to expire on June 30 of the seventh year. At the expiration of the term of each initial member and of each succeeding member, a successor shall be appointed to serve for a term of seven years. Each such term shall expire on June 30 of the seventh year.

- (7) *Public meetings.* The meetings of the ethics review board shall be open to the public in accordance with applicable state and municipal law.
- (8) *Quorum.* Four members of the ethics review board shall constitute a quorum for the purpose of transacting the business of the board.
- (9) *Rules and regulations.* The ethics review board, pursuant to [section 4-107](#) of the Home Rule Charter, shall adopt rules and regulations governing the transaction of its business.
- (10) *Staff.* The board may employ necessary staff in accordance with applicable civil service law and subject to appropriations by the council. The board's operation and procedures shall be governed by chapter 1 of article IX of the Home Rule Charter and by applicable state and municipal law.
- (11) *Investigations.* For purposes of an investigation or a hearing, the ethics review board may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records which the ethics review board deems relevant or material to an investigation or hearing.
- (12) *Amendment.* Pursuant to section 9-402(3) of the Home Rule Charter, this section may only be amended by an ordinance receiving a two-thirds favorable vote of the entire membership of the city council.

Sec. 2-720 – 2-740 Reserved. .

Subdivision II. State Code of Governmental Ethics

Sec. 2-741. State code of ethics.

The state code of governmental ethics (state ethics code) is established by R.S. 42:1101 et seq. The state ethics code applies to all officials and employees of the city and its various departments, boards, commissions, offices, and other agencies.

(Code 1956, § 22B-10)

Sec. 2-742. Dissemination of state ethics code.

The chief administrative officer shall cause a copy of the state code of governmental ethics to be given to each official and employee of the city and its various departments, boards, offices and other agencies.

(Code 1956, § 22B-11)

Sec. 2-743. Advisory opinions; complaints.

The chief administrative officer shall advise all officials and employees of procedures for obtaining advisory opinions from the state ethics commission and for filing complaints under the state code of governmental ethics.

(Code 1956, § 22B-12)

Sec. 2-744. City ethics code supplemental.

The city code of ethics in subdivision III of this division is intended to supplement the provisions of the state code of governmental ethics. In some matters, the city ethics code is intended to be more restrictive than the state code of governmental ethics. If any provisions of the state code of governmental ethics are more restrictive than any provisions contained in the code of ethics for the city, the provisions of the state code of governmental ethics prevail.

(Code 1956, § 22B-13)

Secs. 2-745—2-765. Reserved.

Subdivision III. City Code of Ethics

Sec. 2-766. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Board applies to boards, commissions, authorities, and other public bodies that are subject to the provisions of the Home Rule Charter of the city, except the city council.

(Code 1956, § 22B-21)

Cross reference— Definitions generally, § 1-2.

Sec. 2-767. Application.

The code of ethics for the city shall apply to all officials of the government of the city, whether elected or appointed; to all employees, whether classified or unclassified; and to members and/or employees of all boards, agencies, commissions, advisory committees, public trusts, and public benefit corporations of the city.

(Code 1956, § 22B-1)

Sec. 2-768. Purpose.

The code of ethics is established to remind each public official and employee that individually and collectively, public officials and employees must adhere to high ethical standards not simply to avoid sanctions or criticism, but because it is the right thing to do. Standards and guidelines established by or pursuant to the code of ethics should be construed and implemented with sensitivity, integrity, and a good faith commitment to advance rather than evade or circumvent the evident or stated spirit and purpose of ethical rules. Public officials and employees should not give unduly narrow or legalistic constructions to specific provisions of applicable ethics codes, standards, or rules and regulations.

(Code 1956, § 22B-3)

Sec. 2-769. Responsibility of public office.

Public officials and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the constitution of the United States and the constitution of this state and to carry out impartially the laws of the nation, state and city and thus to foster respect of all government. They are bound to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their primary concern.

(Code 1956, § 22B-2)

Sec. 2-770. Nonpartisanship and nondiscrimination.

Public officials and employees should take action and make decisions based on the merits, objectively and without partisanship. In taking action and making decisions, public officials and employees should not discriminate against any person because of racial, ethnic, religious, political, sexual or personal prejudice or because of age, disability or sexual orientation.

(Code 1956, § 22B-4)

Sec. 2-771. Development of internal standards.

Each department, board, office, or other agency of city government is encouraged to develop internal minimum standards of ethical conduct or behavior for situations or transactions that may be unique to the particular department, board, office or other agency. The opinions of employees and customers of the agency should be sought and used in the development of such internal standards, rules, regulations and guidelines for ethical conduct. Members of all boards and commissions of the city shall act as prudent administrators.

(Code 1956, § 22B-5)

Sec. 2-772. Freedom from reprisal and disclosure of improper acts.

- (a) Any public employee who reports information which the employee reasonably believes is a violation of any ordinance, statute, policy, order, rule, regulation or other ethical mandate shall be free from discipline or reprisal for reporting such acts of alleged impropriety. An employee with authority to hire and fire, supervisor, agency head, or elected official may not subject to reprisal any public employee because of such employee's efforts to disclose such acts of alleged impropriety.
- (b) The provisions of this section are in addition to the protection afforded by the state code of governmental ethics and the rules of the city civil service commission to public employees who report acts of impropriety to the employee's agency head, civil service, the ethics review board, or the state board of ethics for elected officials or commission on ethics for public employees.

(Code 1956, § 22B-6; M.C.S., Ord. No. 17,613, § 1, 6-20-96)

Sec. 2-773. Matters of public information.

The state Public Records Law, R.S. 44:1 et seq. applies to public records of all departments, boards, offices and other agencies of city government. With certain exceptions, the records and documents in the possession of city government officials and employees are public records that citizens, the news media, and other interested parties are entitled to review and copy. When citizens make a request to review public documents, city officials and employees should respond with courtesy and as expeditiously as possible within the requirements of the state Public Records Law. Officials and employees who have questions as to whether particular information is confidential under the state Public Records Law should contact their supervisor or request assistance from the law department. The chief administrative officer shall advise all

officials and employees of the provisions and requirements of the state Public Records Law.

(Code 1956, § 22B-7)

Sec. 2-774. Other laws, rules, and policies related to standards of conduct.

City officials and employees should be generally aware that laws, rules, and policies established by the federal and state government and agencies thereof and by the chief administrative officer and supervisors in city government prescribe standards of conduct for government and city employees. Some of these rules, laws, and policies are the following:

- (1) The state Code of Governmental Ethics, R.S. 42:1101 et seq., popularly known as the State Ethics Code.
- (2) The state Dual Office Holding Law, R.S. 42:61 et seq.
- (3) Civil Service Law, La. Const., art. 10, and the rules of the city civil service commission.
- (4) Policy and circular memoranda issued by the chief administrative officer.
- (5) Departmental rules and regulations issued by department heads and supervisors.
- (6) The state Public Records Act, R.S. 44:1 et seq., sometimes referred to by citizens as the Freedom of Information Act.
- (7) The state Open Meetings Law, R.S. 42:4.1 et seq., popularly known as the Sunshine Law.

(Code 1956, § 22B-8)

Sec. 2-775. Dissemination of code of ethics.

The provisions of the code of ethics for the city shall be distributed to each elected or appointed official and employee of the city. Upon election or appointment to office or employment with the city, all public servants shall be given a copy of the code of ethics. The chief administrative office shall establish rules providing for the dissemination of the code of ethics.

(Code 1956, § 22B-9)

Sec. 2-776. Specific prohibitions.

The provisions of sections 2-777 through 2-783 shall be considered as specific prohibitions applicable to city officials and/or employees and/or board members as the case may be.

(Code 1956, § 22B-21)

Sec. 2-777. Prohibited financial interests.

No city officer or employee shall have a financial interest in any contract with the city, and no contract for professional or other services shall be awarded on the basis of fee kickbacks. For purposes of this section, the word "contract" shall include remunerative contracts to provide goods or services to the city or for public work and shall not include:

- (1) A contract with the city which a city official or employee is required to enter in order to receive state or federally-funded grants, loans or other public assistance, or
- (2) A sale of abandoned property, as defined by R.S. 33:4720.12(1), to a city employee, when said sale is approved by the mayor, the director of the department by which the employee is employed, and the city attorney, and when such sale is for the purposes of rehabilitation.

(Code 1956, § 22B-21(a); M.C.S., Ord. No. 20966, § 1, 2-6-03)

Sec. 2-778. Leases, concessions restricted.

No lease or concession shall be granted to any corporation in which one or more city officers, employees, or board members hold or control the majority financial interest.

(Code 1956, § 22B-21(b))

Sec. 2-779. Borrowing from, interest in contractors.

No member, officer or employee of a board shall borrow money or receive anything of value from any contractor doing business with the board. No member, officer or employee of a board shall have any interest in any contract let by the board of which he is a member.

(Code 1956, § 22B-21(c))

Sec. 2-780. Forfeiture of board membership.

Any member of a board who shall qualify as a candidate for any public elective office or who shall accept an appointive office or position of public employment for which compensation is paid by the city shall forfeit membership on the board. The

provisions of this paragraph shall not apply to ex officio board members nor to any board member who serves in such capacity by virtue of an elective office in city government.

(Code 1956, § 22B-21(d); M.C.S., Ord. No. 22810, § 1, 9-6-07)

Sec. 2-781. Political activities.

With regard to employees in classified service, the provisions of [section 4-1504](#) of the Charter and article 10, section 9 of the state constitution prohibit certain political activities.

(Code 1956, § 22B-21(e))

Sec. 2-782. Recusal of board members.

Except as otherwise provided in this subdivision, no member of a board, commission, advisory committee, or other entity covered by this article who is excepted from the provisions of R.S. 42:1112 of the state code of governmental ethics with regard to voting or participating in a transaction involving a charitable, religious, nonprofit educational, public service, or civic organization because of the provisions of R.S. 42:1123(1) shall vote on or participate in a transaction otherwise prohibited by R.S. 42:1112 and, in such a case, the member shall, verbally or in writing at a public meeting, announce his recusal from participation in the transaction and the reason for recusal. The intent of this section is to require recusal of board, commission, or committee members who serve on the boards of certain nonprofit corporations in cases where a conflict of interest arises. The provisions of this section shall not apply to the council. The council may provide in its rules and regulations for the recusal of its members.

(Code 1956, § 22B-21(f))

Sec. 2-783. When financial interests permitted.

Nothing in this subdivision shall deprive city officials or employees from having a financial interest in any activity or enterprise which is not in conflict with their respective positions or with any provisions of this article, the city Code, the Charter, applicable civil service or departmental rules, or applicable state or federal law.

(Code 1956, § 22B-21)

Sec. 2-784. Filing complaints.

- (a) Any person may file a complaint concerning violations of this article with the ethics review board, the office of municipal investigation, or municipal court.

- (b) Any qualified elector of the city may file a written complaint in the form of an affidavit with any member of the city council concerning violations of this article involving a member of the city council.
- (c) Subject to the provisions of applicable law, members of the city council receiving complaints in the form prescribed in subsection (b) of this section may request an executive conference of all members of the city council to consider the complaint and may proceed in accordance with the Charter.
- (d) Complaints concerning violations of this subdivision involving the mayor shall follow the same procedure as for those involving a councilmember, as authorized under section 3-124 of the Charter, except that a majority vote of the elected membership of the council shall be required to call a public hearing and to adopt a resolution of censure for violations under this subdivision.

(Code 1956, § 22B-30; M.C.S., Ord. No. 17,613, § 1, 6-20-96)

Secs. 2-785—2-810. Reserved.